## REMARKS

Applicant requests further examination and reconsideration of the application in view of the following remarks.

### 1. Status of the Claims

Claims 1, 39 – 41 and 43 – 70 are pending in this application. Claims 1, 39, 49-65 and 68-70 are rejected. Claims 40, 41, 43-48, 66 and 67 are objected to as dependent on a rejected base claim, namely claim 39.

### 2. Prior Art Rejections

Claims 1, 39, 49-65 and 68-70 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,544,332 to Leebens (Leebens) in view of U.S. Patent No. 5,709,902 to Bartolomei et al. (Bartolomei). Applicant respectfully traverses this rejection as Leebens and Bartolomei fail to teach or suggest the subject matter recited in the present method claims.

As to the rejected claims, the teachings of Leebens and Bartolomei, either alone or in combination, do not teach or suggest a method that includes either: (1) applying a first heat-sensitive coating or coating material; or (2) applying a second coating material to protect the first heat-sensitive coating material applied to a food item as recited in the present claims. The claimed method also includes the subsequent step of heating as recited in claim 1 leaving the first heat-sensitive material substantially intact. Leebens and Bartolomei also fail to teach or suggest such a step, either alone or in combination. Obviously, if neither Leebens nor Bartolomei have a heat-sensitive coating, they cannot subject such a coating to heat as claimed where the first material remains substantially intact.

Leebens merely teaches a single heat stable coating applied to a cereal piece as a powder, flaking the powdered piece and subsequently toasting the flaked powdered

piece. Leebens, col. 3 line 66 through col. 4 line 30. The powdered coating additive is heat stable - not heat-sensitive - as it is resistant to "destruction due to cooking." *Id.* at col. 4 lines 15-25 ("Consequently, the granular or powdered additives are trapped at or near the surface of the flake so that when a consumer eats one of the flakes, the concentrated form of the additive is recognized by the consumer's taste buds and further, any additives which are difficult to incorporate into ready to eat cereal flakes may be incorporated in this manner without destruction due to cooking or the like. In other words, the additive is mechanically entrapped in the flake and therefore will remain in the flake during subsequent processing and sale of the product."). Thus, the Leebens coating is not "heat-sensitive" as required by the present claim. This is further illustrated in Examples I and II of Leebens, where after the initial coating, the product is toasted at 400° F. *See* Leebens at col. 4 lines 56-75. Nor does Leebens teach or suggest a second, protective coating for a first heat-sensitive coating material, either alone or in combination with Bartolomei.

Bartolomei fails to supply the deficiencies of Leebens. Nor is there any reason provided in either reference suggesting that the references be combined. Moreover, combination does not result in the claimed invention. Bartolomei merely teaches applying only a heat tolerant coating to the cereal piece. Bartolomei, col. 6 lines 13-31. In addition, Bartolomei identifies the very problem the present invention solves by disclosing that drying causes the degradation of heat sensitive flavor coatings. *Id.* Bartolomei, however, does not address how to protect a heat-sensitive coating from the drying step. Bartolomei simply avoids the problem by using heat tolerant coatings or reaction flavor ingredients. *Id.* Thus, one skilled in the art would readily recognize that both Leebens and Bartolomei disclose coating a cereal piece with a single layer of heat stable additive. In each reference, the coating can be essentially sugar. Thus, essentially the same material is being used in each of the references.

Assuming that the desire to obtain a crispy cereal piece provides motivation to combine the teachings of Leebens and Bartolomei as the Examiner asserts, which Applicant disputes, such a combination fails to teach or suggest applying a first heat-sensitive material to a food and protecting this heat-sensitive material with a second heat-resistant coating as recited in the present claims. Conversely, coating the Leebens powder-coated flake with the Bartolomei sugar slurry as the Examiner suggests, would yield a cereal piece coated with two layers of heat tolerant material. As previously discussed, each layer—the Leebens inner layer and the Bartolomei outer layer—would provide an essentially heat resistant coating. Such a cereal piece would actually teach away from the present claims as each layer—the Leebens layer in particular—would be composed of a heat-resistant material. Furthermore, there is no teaching or suggestion that Leebens' product is not crispy. In fact, Leebens' product would be crispy because it is toasted at 350-400° F.

Finally, the Examiner implicitly admits that coating the Leebens flake with the Bartolomei sugar coating has nothing to do with providing a heat-sensitive material and protecting the heat-sensitive material with a heat-resistant coating. The Examiner states that adding the Bartolomei sugar coating to the Leebens cereal piece "is used only to enhance the flavor and to obtain the crispness and not as a vehicle to add more additive." Paper No. 12 at ¶ 3 (emphasis added). Thus, in view of the disclosure of each reference and the Examiner's implicit admission, it is readily apparent that the combination of Leebens and Bartolomei, which is not suggested in any event, does not result in the claimed invention and specifically fails to result in 1) applying a first heat-sensitive material to a food piece; and 2) protecting the heat-sensitive material with a second heat-resistant coating as recited in the present claims.

As neither reference even remotely suggest that a heat-sensitive coating material is first applied, the §103 rejection cannot be properly maintained.

## CONCLUSION

It is respectfully submitted that Leebens and Bartolomei, either alone or in combination, fail to teach or remotely suggest 1) applying a heat-sensitive material to a food item, and 2) coating the heat-sensitive material with a heat resistant coating to protect the heat-sensitive material from subsequent heating. Applicant respectfully submits that the §103 rejection is improper and should be withdrawn. In view of the foregoing response, claims 1, 39–41 and 43–70 are allowable. An indication of allowance is solicited at an early date. The Examiner is invited to telephone the undersigned in the event there are any remaining issues.

Respectfully submitted,

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